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LEGAL ISSUES

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A Feast of Formats:

Challenges to Choosing the Right Medium for Legal Information

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The legal information market of today forms a marvelous feast of sources in many formats: print, microform, videotape, audiocassette, CD-ROM, commercial online databases, free Internet resources. For the past decade, choosing from among these formats has been a principal challenge for librarians. Yet certain recent developments in the legal information market and in libraries have introduced additional pieces into the format selection puzzle. The consolidation of the legal publishing industry, the permanent shift of some print resources to electronic form only, the rise of electronic monographs, the appearance of novel online resources, the prospect of a successor to CD-ROM, and a heightened cost-consciousness in law libraries pose significant challenges to making effective format selection choices.

Librarians have produced a substantial literature in recent years on the selection of appropriate formats for information resources, much of it focused on electronic products.¹ In terms of content, criteria such as currency, clarity, breadth and depth of information, as well as the presence of indexes and other finding aids pertain to electronic products just as they do to print resources. The content of electronic resources may be remarkably fluid, however, as vendors vie for market share by freely adding and dropping elements of their electronic offerings.² In addition, electronic products may "bundle" many discrete print resources, though the actual content of these products may differ in

important ways from the print products. Promotional material may misrepresent the content of the product. A trial of the actual electronic product is therefore essential.³

As with printed resources, the reputation of the producer of the resource may be a central criterion in non-print format selection. In the electronic realm, a product from a familiar vendor may feature a well-known user interface or search engine, and may indicate the reliability of technical support for a product.⁴

The physical carrier of an electronic resource — whether CD-ROM, locally loaded magnetic tape, or remote database — is crucial to the selection decision, since the medium must be compatible with local technology. Important factors include a friendly user interface, single versus multiple user interfaces, ease of maintenance,

and the provision of training materials.⁵ Electronic resources may be available in any of several access methods, among them stand-alone terminal, local or wide area network, dedicated line, frame relay, dial access, Z39.50 (character-based or graphical interface), Lotus Notes server, email, telnet and World Wide Web. Different formats and access methods may produce differences in response time, ability to support multiple users, output options and the reliability of connections.⁶

Moreover, product upgrades may introduce problems in functionality.⁷ As Bessie M. Carrington observes, only thorough

testing of actual products in a variety of local technical configurations can inform librarians of the right format/access method for a library.⁸

*"[Our] life is well compared to a feast,
Furnished with choice of all variety ..."*
— Richard Barnfield, *Man's Life* (1598)

Access to archived information poses a serious concern for librarians who select electronic products. For the few who manage to purchase CD-ROMs, the long term viability of that medium remains the subject of debate.⁹ The majority who license materials that remain the property of vendors still have no control over the preservation of and access to this data.¹⁰

Licensing agreements stand at the heart of many electronic selection decisions. Librarians must carefully weigh the definition of the user, "use rights and restrictions and contractual obligations and penalties."¹¹ Licenses and subscription agreements usually determine the pricing structure of an electronic resource. Beyond the direct costs of gaining access to the product, electronic resources may have steep indirect costs for equipment, maintenance and end-user support.¹²

In addition, the new media have led to new models of decision making and organizational structure in the materials selection process. Several authors¹³ attest to the need for eliciting input from many parties, among them users, technical services staff, "reference staff ... network directors and product engineers" to ensure the successful integration of a new resource "into the local environment."¹⁴

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Jonathan A. Franklin notes, all selection decisions will initially proceed from the structure and mission of the particular library.¹⁵ Whereas the firm library selects in order to meet its goals of providing "prompt delivery, fully updated materials, and practical tools to a limited number of patrons," the academic law library concerns itself with "meeting accreditation standards, maintaining a broad collection of secondary sources in areas of faculty interest, and acquiring historically significant materials in formats that will have long lifetimes."¹⁶

Franklin presents several additional criteria for selecting the format of legal materials. First, he advises comparing five-year costs — direct and indirect — for the principle formats. Franklin also underlines the key factor of space savings for law libraries.¹⁷ Franklin then urges librarians to consider the expected level of use and the role of each format in three stages of the legal research process: general legal, researching analogous situations, and citing legal authority. Franklin identifies formats best suited to the tasks of finding, reading and updating material in each type of research.¹⁸

The format selection process for legal materials, then, is a complex process involving many general criteria and numerous local factors, institutional, budgetary, technical. In the past two years, events in the legal information market and a new tone in law libraries have complicated format selection even further. First, the acquisition of major legal information providers by the **Thomson Corporation**, **Reed Elsevier**, **Times Mirror** and **Wolters Kluwer** has led to a new level of instability in the legal publishing industry. For example, the agreement that governs the **West/Thomson** merger stipulates the sale of several **West**, **Lawyers Coop** and **Bancroft-Whitney** titles to **Reed Elsevier**, which has placed them under the **Lexis/Nexis** banner.¹⁹ Thomson subsidiary **Warren Gorham & Lamont** is scattering its law titles among several other Thomson subsidiaries. *Shepard's Citations* is now jointly owned by **Matthew Bender**, a **Times Mirror** Company, and **Reed**.

Among the consequences of these events is, in some cases, the demise of "authorship" as a useful criterion for format selection. If we don't know exactly who produces an information product, we may be unable to assume that it features a familiar user interface. With the administrative structure of our vendors in a state of flux, at times neither we nor our customer service representatives know whom to turn to for technical support. Sales representatives, many of whom have new

product lines or have been transferred recently between companies or divisions, often lack the detailed knowledge of products necessary to support our decision making. Further, recent severe price increases by newly acquired publishers render cost projections of little value.²⁰

Corporate restructuring has also affected formats, as parent corporations infuse funds for electronic product development into subsidiaries, and independent publishers follow suit. For example, many Thomson subsidiaries are rapidly developing new CD-ROM versions of print products, and, in some cases, such as **Warren Gorham & Lamont's Tax Treaties**, entirely eliminating the print version. Reed/Times Mirror subsidiary **Shepard's** has issued CD-ROM versions of its citators.

Electronic monographs are also making their presence felt in the legal marketplace. Some libraries have cut their purchases of continuing legal education materials and litigation reporters, since many of these materials can be found on **Lexis** and **WESTLAW**. Nearly all the major legal publishers offer CD-ROM products that integrate primary and secondary sources; some of these sources have replaced the print versions.²¹ In addition, **West** and **Michie** publish treatises, hornbooks and casebooks on CD-ROM. These texts do suffer from the limitations of current microcomputer hardware, including insufficiently large CRT screens and low resolution. Yet these legal monographs are priced well below the cost of their print versions, and feature the ability to cut and paste, highlight passages, and quickly search the fulltext. Moreover, these CD-ROMs are fully integrated with the **WESTLAW** and **Lexis** online systems: when one clicks on a hyperlinked citation, the search software automatically logs on to the online system and retrieves the fulltext of the cited document. "E-books" thus offer a viable option to law students who are comfortable with computing. In a few years, after the hardware has improved and a generation of technology-savvy law students have become professors and practitioners, law libraries may find electronic books a genuine alternative to increasingly expensive printed monographs.

The rapid growth of valuable legal information available on the Internet has added yet another array of choices for law librarians. Federal and state governments are moving to provide free or low cost Internet access to primary legal materials and forms.²² Smaller legal publishers and vendors such as **LOIS** <<http://www.pita.com/>>, **HyperLaw** <<http://www.hyperlaw.com/index.htm>>, and **VersusLaw** <<http://www.versuslaw.com>> now provide access for a fee to a wealth of primary legal information via the World Wide Web.²³ In response, **West** now sells

individual cases at low cost via its Internet **WestDoc** service <<http://westdoc.com/>>, while the **Lexis Advantage** Web service <<http://www.lexis.com/webadv.html>> provides access to selected libraries and services for a reasonable monthly fee. Moreover, recent successful challenges to **West Publishing's** copyright claims over the text of cases in its reporters portend lower prices for primary legal resources.²⁴ Librarians will still have to rely on **Lexis** and **WESTLAW** for their authoritative updating services and comprehensive collections of case law. Yet more flexible pricing schemes from the large vendors, coupled with the growth of legal collections on the Internet at competitive prices, will allow cost-conscious librarians a much wider variety of choices for primary law.

We are also witnessing the migration of many commercial legal resources to the Internet. A new **CIS** product, **Congressional Compass**, integrates **Lexis-Nexis** fulltext sources with **CIS** indexing. Librarians now have the option-or will have within the year-of fee based or subscription Internet access to **CCH** federal tax products through the **OmniTax Library**, **BNA** products in several areas through **Newsstand** <<http://www.bna.com/newsstand/index.html>>, **RIA** tax forms and other products now in development, and **Matthew Bender Authority**

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On-Demand <http://www.bender.com/bender/open/index_authority>, which allows browsing text and downloading portions of practice materials.

Internet alternatives present their own challenges, however. First, assessing these online resources is difficult, because their content is protean: with new products continuously being added, the precise coverage of these sources will likely be uncertain for some time. In addition, some technical innovations on the Internet pose usage or security problems. For example, many Web resources employ frames, which tend to confuse users by crowding too much information into the screen, and preventing users from bookmarking desired resources.²⁵ Some Web legal resources, such as **DIALOG SELECT** <<http://dialogselect.krinfo.com/>>, require support of **Java** scripts to retrieve material from their databases. Given the security risks that attend enabling Java, librarians often disable Java on public terminals, and may not wish to reconfigure the browsers on users' terminals to facilitate

In this context, user preferences run second to the bottom line: law firm librarians may have to compel attorneys to relinquish their preferred print product for the more cost-effective electronic version.²⁹ These attempts may not be successful, however. One New York firm librarian recently reported having to reacquire outdated print versions of *BNA Environmental Reporter State Law and Regulations* — which has been replaced by a CD-ROM product — in order to satisfy the demands of his users.³⁰ Nor are academic collections immune from such economic pressures and their consequences. A government documents library in the Midwest recently found itself unable to afford its subscription to an online legal information service, and now has to replace many printed legal resources and renew print subscriptions canceled years ago.³¹

What can librarians do to cope with the added complexities of format selection today? First, we would do well to test products with care in our local environments, using multiple browsers to assay Web-based resources. Second, we ought to question representatives thoroughly about vendors' future plans for each product. Third,

Suzanne Fedunok, "Hammurabi and the Electronic Age: Documenting Electronic Collection Decisions," 36 *RQ* 86 (1996). Trisha L. Davis offers a compelling account of the development of electronic resource selection in "The Evolution of Selection Activities for Electronic Resources," 45 *Library Trends* 391 (1997). Katherine F. Martin and Robert F. Rose admirably survey the CD-ROM collection development literature in "Managing the CD-ROM Collection Development Process: Issues and Alternatives," 21 *Collection Management* 77 (1996).

² Kathleen M. Kluegel compares the volatile nature of the contents of online databases to the facets of a kaleidoscope in "The Reference Collection as Kaleidoscope," 36 *RQ* 9 (1996); also available on the Internet (visited July 1, 1997) <<http://alexia.lis.uiuc.edu/~rrichard/RUSA/kaleidoscope.html>>. The volatility of online legal databases was an important factor in the abandonment of the RLG project to catalog Lexis-Nexis and WESTLAW. See Gail M. Daly, "Bibliographic Access to Legal Research Databases Reconsidered," 87 *Law Library Journal* 192, 197 (1995).

³ DAVIS, supra note 1, at 394-395.

⁴ Id. at 394.

⁵ Id. at 396.

⁶ Id. at 397.

⁷ Id. at 398.

⁸ Bessie M. Carrington, "Testing, Testing: Managing Electronic Access in Disparate Times," *Online*, Nov.-Dec. 1996, at 66, 68.

⁹ See, for example, Julia Gelfand, ed., "Does CD-ROM Have a Future?" *Against the Grain*, Apr. 1996, at 17; Elizabeth Henry Klampert, "CD-ROM: An Interim Technology?" *AMLAW TECH*, Summer 1997, at 80; and the fascinating discussion under the headings of "Beyond CD Technology" and "Re: Beyond CD Technology," *Law-Lib Listserv* (July 1, 1997) <law-lib@ucdavis.edu>.

¹⁰ DAVIS, supra note 1, at 398-399.

¹¹ Id. at 399.

¹² MARTIN & ROSE, supra note 1, at 78-79.

¹³ See, for example, Peggy Johnson, "A Model for Improving Electronic Resources Decision-Making," *Against the Grain*, Apr. 1996, at 1, 16; MARTIN & ROSE, supra note 1, at 85; and DAVIS, supra note 1, at 392, 398.

¹⁴ DAVIS, supra note 1, at 392, 398.

¹⁵ Jonathan A. Franklin, "One Piece of a Collection Development Puzzle: Issues in Drafting Format Selection Guidelines," 86 *Law Library Journal*, 753, 761-763 (1994). See also Joan L. Axelroth, "The Media Choice: Print, Online and CD-ROM Products," *Legal Information Alert*, June 1995, at 1. I am grateful to Donna Heroy for "alerting" me to Axelroth's article.

¹⁶ FRANKLIN, supra note 15, at 763.

¹⁷ Id. at 768. Robert L. Buchwalter also discusses space limitations in "Collection Development in the Large Law Library," in *Law Librarianship: A Handbook for the Electronic Age*, 151, 161 (Patrick E. Kehoe et al. eds., 1995).

¹⁸ FRANKLIN, supra note 15, at 770-775. Franklin adopts his analysis of the legal research process from Christopher G. Wren and Jill Robinson Wren, *The Legal Research Manual*, 39 (2d ed. 1986).

¹⁹ See Thomas Scheffey, "What's At Stake in the West Deal" (The Evolving Law Library), *Legal Times*, Nov. 18, 1996, at 27.

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"The physical carrier of an electronic resource — whether CD-ROM, locally loaded magnetic tape, or remote database — is crucial to the selection decision, since the medium must be compatible with local technology."

access to a single service.²⁶ Just as we must test many technical configurations when choosing the appropriate format and access mode for an online source, we must test Web-based products with several browsers to understand the implications of a service for our users. Further, librarians may have to negotiate with vendors to alter the design of networked products.

Librarians may soon have another storage medium to master: the digital versatile disk, or DVD, which is now undergoing field testing. With 4.7 gigabytes of storage capacity and a playing mechanism that can also read CD-ROMs, within a few years the DVD may well replace CD-ROM as the local archival medium of choice. Thus librarians may soon need to plan to convert to DVD.²⁷ [Ed note: see *ATG*, v.9#3, June, 1997, p.76 and p. 79, for a discussion of DVD.]

Economic pressures and cultural changes in libraries, especially in law firm libraries, have also altered accepted criteria for format selection, and forced some librarians to make format choices that have serious repercussions. For example, an AALL panel recently testified to the imperative for firm librarians to reduce costs: "The challenge," stated **Michael Saint-Onge**, "is to meet the needs of the client while incurring as little cost as possible."²⁸

despite pressures to ignore users' preferences, we should solicit users' input on format choices, especially on deselection of familiar formats, and we should take the initiative to educate users about cost and other factors that inform format selection. Until prices have stabilized, we can work collectively to address unfair pricing options. Thereafter, we should attempt multi-year projections for the full range of direct and indirect costs of format options. As formats become better integrated, we need to consider how products can interface with each other. We need to keep abreast of technical innovations that may affect security and access to networked resources. Through listservs and professional bodies, we can encourage vendors to alter product designs to meet our local needs. In sum, we can make better format selection decisions and fashion better products by pooling our knowledge and experiences, and taking action together. This feast of formats must be shared: challenging times call for the power of collective collecting wisdom.

Endnotes

¹ Much of this literature advises librarians on the content of collection development statements for non-print resources. For an outline of electronic collection development statements and a bibliography of articles that treat them, see

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In contrast, the Gateway box was actually a shipping carton that functions to protect the product during transit. The information on its sides was for the use of handlers rather than would be purchasers.


Finally, and perhaps most importantly, the Hills were aware before they ordered the computer that included in the box would be some important terms and they did not attempt to determine these terms in advance. Further, advertisements for Gateway's products clearly "state that their products come with limited warranties and

lifetime support." According to the Court, once a consumer has been put on notice of the existence of warranties, the question then becomes "how limited is the warranty?" Judge Easterbrook outlines three options available for consumers to discover these things:

- First, they can ask the vendor to send a copy before deciding whether to buy. The Magnuson Moss Warranty Act requires firms to distribute their warranty terms on request, 15 U.S.C. §2302(b)(1)(A).

- Second, shoppers can consult public sources (computer magazines, the Web sites of vendors) that may contain this information.

- Third, they may inspect the documents after the product's delivery.

By keeping the computer beyond 30 days, the Hills accepted Gateway's offer, including the arbitration clause. The Court of Appeals vacated the decision of the district court and this case was remanded "with instructions to compel the Hills to submit their dispute to arbitration." 

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²⁰ On the deleterious effects of legal publishing mergers, see Mary Brandt Jensen, "Law Publisher Genealogy, a Rose by Any Other Name: Mergers, Acquisitions, Spin Offs and Sales of American Legal Publishers," 27 *Law Librarian*, 114 (1996). Mary Chapman has observed 12.5%—23.5% price increases for certain West pocket parts since the Thomson merger. See "WEST: Am Jur Legal Forms and More," *Law-Lib Listserv* (Apr. 14, 1997) <law-lib@ucdavis.edu>.

²¹ These products include Matthew Bender's Authority line of CD-ROMs, BNA's CD-ROM Libraries (some of which have replaced the print), CD-ROM collections in taxation and business from RIA and CCH, and West's Bankruptcy Library on CD-ROM.

²² See, for example, Gary T. Cornwell, "The Dissemination of Federal Government Information: Prospects for the Immediate Future," 23 *Journal of Government Information*, 299 (1996); Wallis W. Conhaim, "Accessing State and Local Government," *Link-Up*, May-June 1996, at 5; and Josh Blackman, "Legal Forms on the Net," *Law Office Computing*, Apr.-May 1997, at 62.

²³ See Cary Griffith, "Internet Primary Law You Can Trust," *Law Office Computing*, Apr.-May 1997, at 48, and BLACKMAN, *supra* note 21.

²⁴ See Thomas Scheffey, "West Loses on Copyright Claim," *Legal Times*, May 26, 1997, at 2.

²⁵ For a recent discussion of these and similar problems, see Margaret Jobe, "Framed, Shocked and Other Net Horror Stories," 23 *Colorado Libraries* 36 (1997).


²⁶ Sarah Andeen, "Re: Dialog on the Net," *Law-Lib Listserv* (June 20, 1997) <law-lib@ucdavis.edu>.

²⁷ GELFAND, *supra* note 9, at 17, 21; KLAMPERT, *supra* note 9, at 84; and "Beyond CD Technology" and "Re: Beyond CD Technology," *supra* note 9.

²⁸ "The Future of the Law Firm Library: the AALL Electronic Roundtable," 89 *Law Library Journal* 101, 107 (1997).

²⁹ *Id.* at 115.

³⁰ James O'Meara, "BNA Environmental Reporter: State (Again)," *Law-Lib Listserv* (June 25, 1997) <law-lib@ucdavis.edu>.

³¹ Diana Keith, "Difficult Choices," private e-mail communication (June 4, 1997). 

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